

1997.027000

PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

MICHAEL R. BOWMAN

Application No.: 09/921,994

Filed: August 3, 2001

For: NOVEL EBI-3-ALT PROTEIN  
AND NUCLEIC ACID  
MOLECULES AND USES  
THEREFOR

Examiner: Jeffrey Norman Fredman

Group Art Unit: 1637

December 4, 2002

RECEIVED

DEC 06 2002

TECH CENTER 1600/2900

Commissioner for Patents  
Washington, D.C. 20231

## RESPONSE TO RESTRICTION REQUIREMENT

Sir:

Applicants respond to the Official Action dated November 6, 2002 (Paper No. 9) in the above-identified application, as follows.

## REMARKS

In the outstanding Office Action, the Examiner required that Applicants elect for prosecution one of the inventions among Groups I-VIII for the reasons noted.

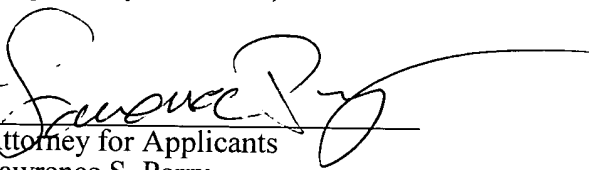
In response, Applicants hereby elect to prosecute the invention of Group I, namely Claims 1-6 and 18, drawn to nucleic acids and host cells. However, Applicants wish to point out to the Examiner the Commissioner's Official Gazette Notice of March 4, 1996 "Guidance on Treatment of Product and Process Claims" which addresses the issue of processes "limited to making or using a nonobvious product" and stated that claims to the

nonelected process should be rejoined when a product claim is found allowable and the withdrawn process contains all the limitations of an allowed product claim.

Entry hereof is earnestly solicited.

Applicants' undersigned attorney may be reached in our New York office by telephone at (212) 218-2100. All correspondence should continue to be directed to our below listed address.

Respectfully submitted,

  
\_\_\_\_\_  
Attorney for Applicants  
Lawrence S. Perry  
Registration No. 31,865

FITZPATRICK, CELLA, HARPER & SCINTO  
30 Rockefeller Plaza  
New York, New York 10112-3801  
Facsimile: (212) 218-2200

NY\_MAIN 311474v1